

## Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 SCS-06 CA-01 HA-05 L-03 H-01 NSC-05

/036 W

-----052050 312105Z /73

P 311626Z DEC 77

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC PRIORITY 5424

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O. 11652: N/A

TAGS: SHUM PGOV CASC BR

SUBJ: NOTE ON ARRESTS OF US CITIZENS

REF (A) BRASILIA 10377; (B) BRASILIA 10451; (C) BRASILIA 10454;

(D) BRASILIA 9966; (E) BRASILIA 10297

1. EMBASSY SUGGESTS FOLLOWING TEXT FOR OUR NOTE TO FOREIGN MINISTRY IN RESPONSE TO AIDE MEMOIRES CONTAINED REFTELS A, B, C, CONCERNING CONSULAR ACCESS PROBLEMS. EMBASSY COMMENTS AND ADDITIONAL PROPOSALS FOR RESOLVING THIS ISSUE ARE BEING SENT SEPTEL.

2. BEGIN TEXT. QUOTE.

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE MINISTRY OF EXTERNAL RELATIONS AND HAS THE HONOR TO REFER TO THE RECENT DISCUSSIONS WITH THE MINISTRY CONCERNING CONSULAR NOTIFICATION AND ACCESS TO CITIZENS OF THE UNITED STATES OF AMERICA ARRESTED OR OTHERWISE DETAINED BY AUTHORITIES WITHIN THE FEDERATIVE REPUBLIC OF BRAZIL.

THE UNITED STATE GOVERNMENT ATTACHES PRIORITY IMPORTANCE TO ITS RESPONSIBILITIES FOR PROTECTION OF ITS CITIZENS ABROAD.

ACCORDINGLY, INSTANCES OF AILURE TO ENSURE CONSULAR NOTIFICATION

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AND ACCESS TO CITIZENS OF THE UNITED STATES UNDER ARREST OR OTHERWISE DETAINED IN BRAZIL IS A MATTER OF DEEP CONCERN TO THE UNITED STATES GOVERNMENT. SPECIFICALLY, THE EMBASSY WISHES TO EMPHASIZE AGAIN THE IMPORTANCE THE UNITED STATES GOVERNMENT ATTACHES TO THE STRICT OBSERVANCE OF THE PROVISIONS OF ARTICLE 36 WHEN A FOREIGN NATIONAL IS ARRESTED OR OTHERWISE DETAINED AND THE OBLIGATION OF THE DETAINING AUTHORITIES TO INFORM THE

PERSON DETAINED OF HIS RIGHT TO REQUEST THAT THE COMPETENT AUTHORITIES OF THE NATIONAL'S STATE BE INFORMED, AND THE FURTHER OBLIGATION TO COMMUNICATE PROMPTLY WITH THE APPROPRIATE CONSULAR AUTHORITIES HAVING JURISDICTION OF THE DETAINEE SO REQUESTS.

THE ISSUE OF CONSULAR NOTIFICATION AND ACCESS HAS BEEN THE PRINCIPAL PROBLEM BETWEEN OUR TWO GOVERNMENTS IN THE CONSULAR SPHERE FOR SEVERAL YEARS. IT WAS FOR EXAMPLE, A CENTRAL CONCERN OF US EMBASSY NOT 418 ON OCTOBER 4, 1974,

US EMBASSY NOTE 050 OF FEBRUARY 4, 1975, AND US EMBASSY NOTE 075 OF MARCH 4, 1975. IN THE OPINION OF THE GOVERNMENT OF THE UNITED STATE, THE BRAZILIAN AIDE MEMOIRES RESPONDING TO US EMBASSY NOTES DATED JULY 21, NOVEMBER 28 AND NOVEMBER 30, 1977, CONCERNING THE CASES OF MESSRS. CAPUANO AND ROSEBAUGH, BUTTS, AND MAXEY, ROSS AND WILLIAMS, RESPECTIVELY, HAVE NOT CONTRIBUTED TOWARD A RESOLUTION OF THIS PROBLEM. TWO OF THE AID MEMOIRES DENIED THAT THE IMPRISONED US CITIZENS REQUESTED ACCESS TO A CONSULAR OFFICER, STATING THAT THERE WAS NO SUCH RECORD. WHETHER THE REQUESTS WERE RECORDED OR NOT, IN ALL THREE CASES THE US CITIZENS THEMSELVES TOLD US CONSULAR OFFICERS AFTER THEIR RELEASE OF REPEATED REQUESTS WHICH WEND UNHEEDED. IN FACT, AS THE EMBASSY'S NOTE OF NOVEMBER 30, 1977, STATES, IN THE CASE OF US CITIZENS ROSS, WILLIAMS, AND MAXEY THE FEDERAL POLICE AUTHORITIES IN PORTO VELHO ACKNOWLEDGED THAT SUCH REQUESTS HAD, IN FACT, BEEN MADE. TWO OF THE AIDE MEMOIRES IMPLIED THAT PUBLICITY IN THE MEDIA OR INFORMATION PROVIDED THROUGH INTERNATIONAL LIMITED OFFICIAL USE

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POLICE COOPERATIVE CHANNELS SHOULD BE A SUFFICIENT SUBSTITUTE FOR IMMEDIATE NOTIFICATION BY APPROPRIATE AUTHORITIES TO CONSULS ABOUT THE INCARCERATION OF US CITIZENS, A POSITION WHICH THE US GOVERNMENT COULD NOT ACCEPT. SIMILARLY, THE US GOVERNMENT

REGARDS REMARKS IN TWO OF THE AIDE MEMOIRES ABOUT "THE NATURE OF THE OFFENSE" AS IRRELEVANT TO THE ISSUE OF CONSULAR ACCESS. THE JURIDICAL PRINCIPLE OF ACCESS WITH WHICH WE ARE CONCERNED APPLIES REGARDLESS OF THE OFFENSE THE DETAINEE MAY BE ACCUSED OF COMMITTING. MOST IMPORTANT, THE AIDE MEMOIRES FAIL TO DEAL WITH THE PRACTICAL AS WELL AS JURIDICAL PROBLEMS OF INSURING BOTH THAT DETAINEES ARE AWARE OF THEIR RIGHT TO SEE THEIR CONSUL AND THAT THEIR REQUESTS FOR CONSULAR ACCESS ARE PROPERLY AND QUICKLY RESPONDED TO BY LOCAL OFFICIALS, THUS INSURING THAT ABUSES DO NOT OCCUR IN THE FUTURE. UNLESS EFFECTIVE MEASURES ARE ADOPTED TO INFORM APPROPRIATE LOCAL AND FEDERAL AUTHORITIES OF TREATY RESPONSIBILITIES, THE ISSUE WILL CONTINUE TO INCREASE IN IMPORTANCE. WE ARE BRINGING THIS PROBLEM TO THE MINISTRY'S ATTENTION AGAIN IN THE FURTHER IMPLEMENTATION OF THE POLICY OF AVOIDING THE ESCALATION OF BILATERAL ISSUES THROUGH CLOSE CONSULTATION BETWEEN OUR TWO GOVERNMENTS ON MATTERS OF CONCERN. THE EMBASSY REITERATES ITS REQUEST THAT ALL BRAZILIAN

SECURITY AGENCIES BE APPROPRIATELY INSTRUCTED REGARDING THE  
NOTIFICATION AND ACCESS PROCEDURES REQUIRED BY ARTICLE 36,  
AND WOULD APPRECIATE ANY SUGGESTIONS THE BRAZILIAN GOVERNMENT  
MIGHT HAVE CONCERNING OTHER STEPS TO RESOLVE THIS DIFFICULT  
AND IMPORTANT ISSUE.

THE EMBASSY OF THE UNITED STATES OF AMERICA TAKES THIS  
OPPORTUNITY TO RENEW TO THE MINISTRY OF EXTERNAL RELATIONS  
THE ASSURANCE OF ITS HIGHEST CONSIDERATION. UNQUOTE. END TEXT  
JOHNSON

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## Message Attributes

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